

Massachusetts Department of Conservation and Recreation (DCR) &
Massachusetts Executive Office of Energy and Environmental Affairs (EOEEA)

Off-Highway Vehicle (OHV) Enforcement and Education Working Group

Minutes - August 10, 2007 (Meeting 1 of 4)

Attendees:

George Agganis, Captain, Office of Environmental Law Enforcement; Kenneth Anderson, President, MA All Terrain Vehicle; Roger Arduini, Deputy Director of Enforcement, Office of Environmental Law Enforcement; Rebecca Barnes, Western Trails Coordinator, DCR; Bruce Bennett, Major, Office of Environmental Law Enforcement; Gary Briere, Bureau of Recreation Chief, DCR; Jack Buckley, Deputy Director, Division of Fisheries and Wildlife; Giovanni Caramiello, Sergeant, MA State Police; Frank Frey, MA Coordinator, New England Trail Riders Association; Justin Gilardi, Northeast ATVers; James Hanlon, Director, Office of Environmental Law Enforcement; Robert O'Connor, Director Watershed Policy, EOEEA; Kenneth Pruitt, Executive Director, MA Association of Conservation Commissions; Heidi Ricci, Senior Policy Analyst, Massachusetts Audubon Society; Curt Rudge, Chief Ranger, DCR; Wayne Sampson, Executive Director, MA Chiefs of Police Association; David Shook, Berkshire Trails Council; Rick Sullivan, Commissioner, DCR; Rena Sumner, Executive Director, Snowmobile Association of Massachusetts; Randy Toth, Snowmobile Association of Massachusetts; Jason Zimmer, Southeast District Manager, Division of Fisheries and Wildlife

Logistical Support – Lorraine DellaPorta, Massachusetts Office of Dispute Resolution; William Logue, Facilitator, Logue Group; Anita Wysocki, DCR Bureau of Recreation

The OHV Working Group was assembled by DCR Commissioner Rick Sullivan to accomplish four goals:

1. Assess existing laws and regulations pertaining to the use and operation of recreation vehicles and identify opportunities and strategies to enhance their effectiveness for the protection of public safety, the environment, and public and private property
2. Review the current capacity of agencies charged with enforcing OHV laws and regulations and identify opportunities and financing strategies to increase the capacity of the enforcement system
3. Identify short-term opportunities and strategies to reduce unsafe and inappropriate use of OHVs that are currently available under existing laws, regulations, enforcement capacity and funding mechanisms
4. Identify opportunities to improve communication among stakeholders in order to increase safe, responsible and legal OHV use

Welcome and Meeting Purposes

Rick Sullivan, DCR Commissioner welcomed the group and extended the agency's appreciation for the participation by so many agencies and organizations. The Commissioner spoke about the challenges that illegal OHV use brings to all landowners reflecting on his own experience managing the activity as the Mayor of Westfield. The Commissioner expressed his hope that this collective group could identify options to improve enforcement to the benefit of riders and landowners alike.

Bob O'Connor, Director Watershed Policy, EOEEA expressed the Secretariat's interest in this issue and hopes that this diverse group can identify solutions. Bob indicated that a similar process had been effective in reworking Chapter 61 statutes and anticipated similar success from this process.

Bill Logue, Facilitator, Logue Group - presented an overview of agenda, outlined the process and participant roles, and reviewed meeting and process ground rules and materials. Bill pointed out that the specific focus of this group is enforcement and therefore will devote its effort to looking at the statutes, regulations, enforcement capacity and educational efforts that will determine enforcement effectiveness.

Background Presentation of Issues from DCR Perspective - Gary Briere

Gary Briere shared a brief PowerPoint presentation outlining recent efforts by the agency to improve OHV management. PowerPoint presentation is available on DCR Website at www.mass.gov/dcr/recreate/OHV

DCR estimates that approximately 90,000 MA households own OHVs which include off highway motorcycles and all terrain vehicles. About 29,000 OHVs are registered in Massachusetts.

About 180 miles of OHV trails are designated on DCR properties in 9 locations. However, poor siting, design and construction of existing trails has led to trail degradation and unsafe conditions for both riders and other trail users. The rider community has committed hundreds of hours of trail maintenance work in each forest to help alleviate the problems but a more effective approach to motorized trail recreation is needed to ensure that trails are safe and sustainable.

DCR believes there are three key elements to sustainable management of OHVs in Massachusetts:

- Legal and appropriate areas to ride
- Effective enforcement against illegal riding
- Consistent education by DCR, Environmental Police Officers, dealers, clubs and manufacturers

In an effort to better assess locations which may be appropriate for OHV trails, DCR assembled a working group in 2005 to develop criteria for siting motorized trails. That effort resulted in new OHV siting policy. The siting policy that emerged from this process is available at DCR's website: http://www.mass.gov/dcr/recreate/ohv_policy.pdf

DCR has invited this working group to focus on the enforcement and education elements of the overall OHV management strategy. Specifically, this group will help identify potential changes to state law (Chapter 90B) and state regulations to help improve OHV enforcement. In addition, DCR hopes this group can identify potential opportunities to improve communication and education within the rider community as well as among other stakeholders.

Participant Introductions and Issue Identification

Each participant was asked to introduce themselves, describe their interest in the subject of OHV regulations and use and identify what they believe is the one most important issue to be addressed regarding enforcement and education. Several themes emerged as these issues were identified:

Enforcement Capacity Issues

- Many participants felt that a primary reason for inadequate enforcement is the lack of enforcement staffing, especially Environmental Police Officers
- On DCR lands, lack of DCR rangers was identified as a significant factor
- Generally, vehicle law enforcement is geared for highway and rural roads. State and local police are challenged in providing OHV enforcement because it requires different equipment and training for success
- Increase capacity of enforcement to decrease damage as well as educate riders about their impact on the environment
- The Snowmobile Association hires enforcement details with grant \$ during special events to help avoid conflicts with other users or trail neighbors and works with Environmental Police Officers to provide safety training

Judicial System Issues

- Support from municipal and judiciary personnel is critical to prevent the reduction of fines, rendering them ineffective

Uninformed Rider Issues

- It was suggested that illegal riding may be the result of different issues such as parental purchase of ATVs for children without training or knowledge of legal places to ride
- There is inconsistent communication regarding legal riding areas. Riders are sometimes unaware of the rules on a particular property. Sometimes riders are directed to locations where they are less likely to bother people (though the area may not be designated for the use)
- Mandatory safety and education should be required for registration/purchase
- Work with dealer groups and non-traditional dealers to educate riders
- Manufacturers need to be part of the discussion and encouraged to provide a consistent message and educate users before the purchase of OHVs

Lack of Legal Riding Issues

- Having no local, designated riding areas promotes illegal use. The nearest state designated ATV riding area from Boston is the Berkshires
- Illegal riders along power lines may be a matter of convenience because of proximity to home

- Existing designated trails may not be adequate to hold user interest
- Legal riders may be penalized due to the misbehavior of illegal riders. There is a need to reinforce positive behavior and to create opportunities for riders

Environmental Issues

- There is a significant amount of damage being done to rare, threatened and endangered species habitats (violation of Massachusetts Endangered Species Act) and jurisdictional wetland resource areas (violation of MA Wetlands Protection Act)
- There are approximately 500 miles of illegal trails on Fish and Game property

Funding Issues

- Increased and dedicated funding is necessary if we are going to improve enforcement and education
- Funds received through penalties and registration should be dedicated to trail development and maintenance as well as enforcement and education

Registration and Penalty Issues

- Manage off-highway vehicles similar to motor vehicles
- Requiring registration be tied with bill of sale, purchase insurance (may not be available for OHVs in MA)
- Attach penalties to the owner's driver's license
- Penalties need to be sufficient to act as a deterrent
- Caution, raising registration fees as opposed to increasing penalties punishes the OHV rider who obeys the laws
- Existing laws are poorly written and obsolete

Discussion of Current OHV Laws and Regulations – Chapter 90B, chapter 90 C and Code of Massachusetts Regulations (323 CMR 3.00)

Bruce Bennett of the Office of Environmental Law Enforcement gave a brief introduction to Chapter 90 B, of the General Laws of Massachusetts. This Massachusetts law covers the use of motorboats, other vessels and recreational vehicles. Copies of the law were distributed to working group participants. Bruce explained that this legislation was written about 1970 in response to snowmobile use. As technology has changed and new recreational vehicles have come onto the market, the law has not been updated to recognize new issues and challenges.

The law is divided into the following sections:

- Section 20: Definitions
- Section 21 Unregistered Operation
- Section 22 Registration; application; period; certificate; name and address; transferability; fees
- Section 23 Transfer of ownership
- Section 24 Lights; reflectors; excessive noise; obnoxious fumes
- Section 25 Operation on public ways; emergencies; regulations
- Section 26 Dangerous and prohibited operation; restrictions; operators license requirement
- Section 27 Accident reports

- Section 28 Suspension or revocation of registration; hearing
- Section 29 Rules and regulations
- Section 30 Nonresident recreational vehicles
- Section 31 Municipal assessments
- Section 32 Regulations; enforcement; reports of violations

Massachusetts General Law, Ch. 90C; Section 1 establishes that recreational vehicles including ATVs and snowmobiles are considered motor vehicles for the purposes of the act and therefore violations are limited to non-criminal citations.

Clarification was requested regarding statute v. CMR – Statutes are another term for the laws created by the legislature. In general, statutes apply on both private and public lands; The Code of Massachusetts Regulations or “CMRs” are created by agency directors through public hearing process and apply only to the specific agency. The authority to create regulations is established in statute. As an example, Section 29 of Chapter 90B establishes the authority of the Director (of the office of Environmental Law Enforcement) to make the regulations pertaining to snow vehicles and recreation vehicles. Additionally, different agencies have different regulations. For example, the Department of Fish and Game has more stringent OHV regulations pertaining to their properties than other agencies.

The discussion of Chapter 90 B and C prompted a variety of comments:

- We may need to increase fines to a level where they are a deterrent. Explore increasing fines with each successive offense.
- There should be a provision for driving under the influence (DUI) in the recreational vehicle laws.
- The law needs a clarification regarding a “waiver” of registration for vehicles registered in another state.
- Clarification is needed with regard to the rights and liability of private landowners. As an example, snowmobile riders must have landowner permission and a landowner can give permission to an association and their current members. Bruce explained that there are other Massachusetts General Laws that protect the rights of landowners. These may be useful to private landowners in protecting their property from vehicular trespass as well as other types of illegal use.

Discussion of Potential Changes to OHV Laws and Regulations – Chapter 90B, chapter 90 C and Code of Massachusetts Regulations (323 CMR 3.00)

It was pointed out that DCR, the Office of Environmental Law Enforcement, the Mass Land Trust Coalition, New England Trails Riders and others have already proposed or drafted potential changes to Chapter 90 B, Chapter 90 C or OELE regulations pertaining to OHV’s. At some point, those various proposals might be brought to this working group by the proponents for presentation. It was further suggested we review the statutes and regulations from other states. The National Off Highway Vehicle Conservation Council was suggested as a knowledgeable group that may provide suggestions for consideration. There is also legislation pending concerning snowmobiles that that may offer useful direction.

Bill DeVane Logue suggested that the group identify elements that they would like to see included in proposed changes to state law or regulation. A variety of ideas emerged from the discussion.

Enforcement Ideas

- Make the vehicle owner responsible for violations and resulting fines incurred on the vehicle.
Increase minimum operating age
- Require insurance (not currently available in Massachusetts)
- Tie OHV penalties to the operators motor vehicle operator license
- Require all riders under 16 or 18 to participate in a rider safety and responsibility education program
- Establish law which limits the age/size of the rider to appropriately sized machine as recommended by manufacturer
- Acquire ATVs for local police and train officers to use them – foster cooperative efforts between towns
- Increase the authority to confiscate vehicles. Current laws allow for towing and storage charges
- .Manufacturer contracts
- Liability – tie directly to owner and their Driver's License

Registration Ideas

- Create incentives to register – discounts, free education, free helmet, etc.
- Collaborate with manufacturers or national organizations – make vehicle registration required for warranty
- Propose a mandatory registration which occurs at the point of purchase. (Discussion recognized that there may be exceptions in the case of vehicles used on private property only, agricultural use or out of state use)
- Create incentives to register so that we may identify illegal riders

Education Ideas

- Require operator education program covering safety, laws and environmental protection
- Improve communication of information regarding private landowner rights and liability
- Set up system of trail patrols in safety vests – utilize club members as volunteer patrollers to educate riders and report problems to land managers or law enforcement
- Take advantage of existing manufacturer education programs which cover the cost of rider safety and responsibility training
- Work with dealers, clubs, enforcement agencies and others to ensure consistent information regarding riding opportunities and prohibitions

Revenue Ideas

- Increase registration fees and fines and re-establish retained revenue mechanisms to allow registration income to be directed for enforcement, education, trail development and maintenance
- Institute trail user fees

- Direct percentage of the gas tax – federal and state – to trail development, maintenance and OHV enforcement
- Direct a percentage of tax revenue on OHV sales to OHV management as is done with certain sporting goods sales which supports Fish and Game

Next Steps / Next Meeting

Bill Logue reviewed some of the most common ideas that had been discussed and next steps. The agenda for the next meeting could include presentation of various ideas that have emerged from group members or other groups and a focused effort to consolidate ideas into specific language. Bill suggested that Bob O'Connor, Gary Briere and he draft the agenda for the next meeting and distribute along with the meeting notes.

Tasks Prior to Next Meeting

- Distribute minutes and Agenda for next meeting
- Make DCR PowerPoint available to working group members
- Research landowner's rights and liabilities
- Research national OHV groups and organizations for collaboration and invite guests as a resource to make presentation to create balance and gain different perspectives - national experts or non-partisan group
- Research legislation in place in other states
- Research registration and funding sources of other states
- Provide clarification, revisions and updates to MGL Ch. 90B
- Determine where gas tax money goes
- Get copies of pending legislation (Safety Bill in Transportation & NETRA Bill and Snowmobile legislation)

Items for Discussion at another Time

- Education of clerks, enforcement, judges regarding fines
- Outreach to Judiciary
- Investigate Vermont's six-hour course